

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

WYLLY ISLAND HOMEOWNERS'  
ASSOCIATION AND WYLLY ISLAND  
DOCKOWNERS' ASSOCIATION,

Plaintiffs,

v.

STATE FARM FIRE & CASUALTY  
COMPANY AND JOHN SMITH,

Defendants.

CIVIL ACTION FILE NO.

[On Removal from the State Court  
of Chatham County, Georgia  
Civil Action File No. ST-CV-1701904]

**NOTICE OF REMOVAL**

**COME NOW STATE FARM FIRE AND CASUALTY COMPANY (“STATE FARM”) AND JOHN SMITH** ( collectively, “Defendants”), and within the time prescribed by law, file this Notice of Removal and respectfully show the Court the following facts:

1.

Plaintiffs have filed suit against Defendants in the State Court of Chatham County, which county is within the Savannah Division of this Court. This suit is styled as above and numbered Civil Action File No. ST-CV-1704904 in that Court. This suit is for a sum in excess of \$75,000.00. This suit is based on State Farm Fire and Casualty Company’s alleged failure to pay Plaintiff’s claims under an insurance contract for alleged property damages, after Hurricane Matthew allegedly caused such property damage. In addition to the breach of contract claim, Plaintiffs have asserted claims for bad faith, breach of other alleged duties, and punitive damages against Defendants.

2.

Defendant State Farm Fire and Casualty Company is a corporation organized under the laws of the State of Illinois with its principle place of business in the State of Illinois. It is not a citizen of the State of Georgia, was not a citizen of the State of Georgia on the date of filing of the aforesaid civil action, and has not been thereafter.

3.

Defendant John Smith is a citizen of the State of Georgia who has been fraudulently joined in this matter inasmuch as there is no cause of action of any kind against the Defendant John Smith, he was not a party to the contract which is the subject of this claim, and he was added as a party in this matter for the sole purpose of avoiding the jurisdiction of this Court.

4.

Plaintiffs in the aforesaid case are residents and citizens of the State of Georgia.

5.

As shown by the attached affidavit, Plaintiffs alleged property damages of at least \$285,018.00, and made a demand for the limits of coverage available for said property under State Farm's policy of insurance, policy No. 91-21-7506-5, in the amount of \$233,500.00. See Exhibit A, ¶¶ 11-16; Exhibits 1-4 to Exhibit A.

6.

Plaintiffs allege that as a result of State Farm's conduct, State Farm has breached its contract with Plaintiffs by failing to make such payments under the policy. See Plaintiffs' Complaint, ¶¶ 25-26.

7.

Plaintiffs allege that Defendant State Farm has acted in bad faith, has acted in an arbitrary

and capricious manner, and has acted without probable cause. See Plaintiffs' Complaint, ¶¶17-19.

8.

Plaintiffs further allege that Plaintiffs are entitled to attorneys' fees, costs, interest, and penalties for the prosecution of their action against Defendant State Farm. See Plaintiffs' Complaint, ¶23.

9.

Although Plaintiffs' Complaint does not seek a specified amount of damages, it is apparent from the face of the Complaint that Plaintiffs seek a recovery in excess of \$75,000.00, exclusive of interest and costs, as Plaintiffs demand judgment in their favor for Plaintiffs' special, general, and equitable damages, punitive damages, and attorneys' fees, penalties, and interest. Exhibit A, ¶19.

10.

As shown above, the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

11.

Defendants further show that Defendant John Smith is a captive agent of State Farm with exclusive representation of State Farm.

12.

Because Defendant Smith is an exclusive and captive agent for Defendant State Farm, Defendants contend that Defendant Smith owed no independent duties to Plaintiffs. As a consequence, Defendants contend that Defendant Smith was improperly and/or fraudulently joined in this matter by Plaintiffs.

13.

The aforementioned civil action is a civil action of which this Court has original jurisdiction under the provisions of Title 28 of the United States Code §1332, and, accordingly, is one which may be removed to this Court by Plaintiffs or Defendants pursuant to the provisions of Title 28 of the United States Code §1441, in that it is a civil action in which the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs and is between Plaintiffs, who are citizens of Georgia; State Farm, which is a citizen of Illinois; and Defendant Smith, who is a citizen of Georgia, but who Defendants contend has been improperly and/or fraudulently joined.

14.

Defendants show that said suit was instituted on November 14, 2017. Defendants further show that Defendant Smith was served on November 16, 2017, and that Defendant State Farm was served on November 28, 2017. Defendants show that this notice of removal is filed within 30 days from the date of service of said suit on Defendant Smith.

15.

Defendants have attached hereto copies of all process, pleadings and orders served upon Defendants and/or filed by Plaintiffs in this case, such copies being marked "Exhibit B".

16.

Defendants have given written notice of the filing of this Notice of Removal to the Plaintiffs by notifying their attorneys of record, David J. Utter, Esq. and William R. Claiborne, Esq. of The Claiborne Firm, P.C. 410 East Bay Street, Savannah, GA 31401; and Soren E. Gisleson, Esq. of Herman, Herman & Katz, LLC, 820 O'Keefe Avenue, New Orleans, LA 70113. Defendants have also filed a written notice with the clerk of the State Court of Chatham

County, a copy of said notice being attached hereto and made in part hereof.

**WHEREFORE**, Defendants pray that this case be removed to the United States District Court for the Southern District of Georgia, Savannah Division.

This 13<sup>th</sup> day of December, 2017.

Respectfully submitted,

**SWIFT, CURRIE, McGHEE & HIERS**

/s/ Mark T. Dietrichs

Mark T. Dietrichs

Georgia Bar No. 221722

***Attorney for Defendants State Farm Fire and  
Casualty Company and John Smith***

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1355 Peachtree Street, NE  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing ***NOTICE OF REMOVAL*** Upon all parties to this matter by depositing a true copy of same in the U. S. Mail, proper postage prepaid, addressed to counsel of record as follows:

David J. Utter, Esq.  
William R. Claiborne, Esq.  
The Claiborne Firm, P.C.  
410 East Bay Street  
Savannah, GA 31401

Soren E. Gisleson, Esq.  
Herman, Herman & Katz, LLC  
820 O'Keefe Avenue  
New Orleans, LA 70113

This 13<sup>th</sup> day of December, 2017.

**SWIFT, CURRIE, M'GHEE & HIERS**

s/ Mark T. Dietrichs

Mark T. Dietrichs

Georgia Bar No. 221722

**Attorney for Defendants State Farm Fire and  
Casualty Company and John Smith**

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